



General Assembly

***Substitute Bill No. 1012***

*January Session, 2001*

***AN ACT CONCERNING NITROGEN REDUCTION IN LONG ISLAND SOUND.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1       Section 1. (NEW) As used in sections 2 to 5, inclusive, of this act:
- 2       (1) "Equivalency factor" means a ratio of the unit response of  
3       dissolved oxygen to nitrogen in Long Island Sound for each publicly-  
4       owned treatment works based on the geographic location of the  
5       specific publicly-owned treatment works' discharge point divided by  
6       the unit response of the geographic area with the highest impact;
- 7       (2) "Equivalent nitrogen credit" means a nitrogen credit multiplied  
8       by the equivalency factor;
- 9       (3) "Equivalent pounds" means the actual pounds of nitrogen  
10       discharged by a publicly-owned treatment works multiplied by the  
11       equivalency factor for that publicly-owned treatment works;
- 12       (4) "Individual waste load allocation" means that portion of the  
13       state-wide waste load allocation apportioned to an individual publicly-  
14       owned treatment works;
- 15       (5) "Nitrogen" means the total of ammonia nitrogen, organic  
16       nitrogen, nitrite nitrogen and nitrate nitrogen;
- 17       (6) "Nitrogen Credit Advisory Board" means the board appointed

18 by the Commissioner of Environmental Protection pursuant to section  
19 3 of this act;

20 (7) "Nitrogen credit exchange program" means the program within  
21 the Department of Environmental Protection established pursuant to  
22 section 4 of this act;

23 (8) "Nitrogen credit" means the difference between the annual total  
24 nitrogen load specified for a publicly-owned treatment works in the  
25 general permit for nitrogen discharges and the annual total nitrogen  
26 load discharged by that publicly-owned treatment works expressed as  
27 pounds of nitrogen per day;

28 (9) "Nonpoint source" means any source of nitrogen originating  
29 from other than a readily discernable end of pipe source;

30 (10) "Publicly-owned treatment works" means a system used for the  
31 collection, treatment or disposal of sewage from one or more parcels of  
32 land and that discharges to the waters of the state and is owned by a  
33 municipality or the state;

34 (11) "State-owned equivalent nitrogen credits" means the difference  
35 between the annual state-wide waste load allocation established in the  
36 total maximum daily load and the sum of the annual discharges for all  
37 publicly-owned treatment works;

38 (12) "State-wide waste load allocation" means the maximum  
39 allowable nitrogen load from publicly-owned treatment works into  
40 Long Island Sound that will meet water quality standards as specified  
41 in the total maximum daily load;

42 (13) "Total maximum daily load" means the total maximum daily  
43 load analysis to achieve water quality standards for dissolved oxygen  
44 in Long Island Sound, as established by the Department of  
45 Environmental Protection and as approved by the United States  
46 Environmental Protection Agency; and

47 (14) "Unit response" means the reaction of dissolved oxygen in Long

48 Island Sound to a change in nitrogen loading of 1.0 pound.

49       Sec. 2. (NEW) Notwithstanding any provision of section 22a-430 or  
50 22a-430b of the general statutes and notwithstanding nitrogen limits  
51 specified in individual discharge permits issued pursuant to said  
52 section 22a-430, the Commissioner of Environmental Protection shall  
53 issue a general permit specifying effluent limits for nitrogen in  
54 accordance with the total maximum daily load. In order to meet water  
55 quality standards, the commissioner may incorporate compliance  
56 schedules into permits issued under this section and said sections  
57 22a-430 and 22a-430b. The general permit shall establish effluent limits  
58 for nitrogen and shall establish an annual compliance schedule for  
59 nitrogen for each publicly-owned treatment works. Under the general  
60 permit, the commissioner may require publicly-owned treatment  
61 works to (1) meet effluent limits and other conditions for discharging  
62 nitrogen to the waters of the state pursuant to their individual waste  
63 load allocations, (2) comply with monitoring requirements as set forth  
64 in the general permit, and (3) comply with any other requirements as  
65 determined by the commissioner necessary to carry out the provisions  
66 of this section. Publicly-owned treatment works may participate in the  
67 nitrogen credit exchange program in order to comply with effluent  
68 limits for nitrogen specified in the general permit.

69       Sec. 3. (NEW) (a) The Commissioner of Environmental Protection  
70 shall establish a Nitrogen Credit Advisory Board to assist and advise  
71 the commissioner in administering the nitrogen credit exchange  
72 program. The board shall consist of the Commissioner of  
73 Environmental Protection or the commissioner's designee, the  
74 Secretary of the Office of Policy and Management or the secretary's  
75 designee, the State Treasurer or the Treasurer's designee and seven  
76 public members to be appointed in accordance with this section. The  
77 seven public members shall include an official of a major publicly-  
78 owned treatment works appointed by the speaker of the House of  
79 Representatives, a municipal public works official appointed by the  
80 president pro tempore of the Senate, a representative from a  
81 municipality that purchases nitrogen credits appointed by the majority

82 leader of the House of Representatives, a representative from a  
83 municipality that sells nitrogen credits appointed by the majority  
84 leader of the Senate, and three persons having experience in either  
85 wastewater treatment, environmental law or finance, one to be  
86 appointed by the minority leader of the House of Representatives, one  
87 to be appointed by the minority leader of the Senate, and one to be  
88 appointed by the Governor. All initial appointments shall be made not  
89 later than August 1, 2001, and shall be made so the composition of the  
90 board is, to the extent possible, balanced with regard to buyers and  
91 sellers of credits, large and small municipalities and representatives  
92 from different geographic regions of the state.

93 (b) The Commissioner of Environmental Protection, or the  
94 commissioner's designee, shall serve as chairperson of the board and  
95 shall schedule the first meeting of such board not later than September  
96 1, 2001. A majority of the members shall constitute a quorum for the  
97 transaction of business. The principal office of such board shall be the  
98 office of the Commissioner of Environmental Protection. At its first  
99 meeting, the board shall determine by lot which members shall serve  
100 for one, two or three years, provided the terms of office of not more  
101 than fifty per cent of the board shall expire in any one year. Thereafter,  
102 each term of office shall be for three years. The board shall choose a  
103 secretary by ballot from its membership.

104 (c) Not later than September thirtieth, annually, the board shall  
105 submit to the joint standing committee of the General Assembly  
106 having cognizance of matters relating to the environment its findings  
107 that address the following:

108 (1) A summary of the nitrogen credit exchange program's progress  
109 in achieving the total maximum daily load;

110 (2) The adequacy of the Clean Water Fund financing pursuant to  
111 section 22a-477 of the general statutes, as amended by this act, to  
112 support the nitrogen credit exchange program and the total maximum  
113 daily load;

114 (3) Recommendations for changes to the program including, but not  
115 limited to: (A) Exchanging nitrogen credits with entities outside the  
116 state; (B) expanding the general permit for nitrogen discharges and the  
117 nitrogen credit exchange program to include additional point and  
118 nonpoint sources; and (C) exchange transactions executed outside of  
119 the nitrogen credit exchange program; and

120 (4) Identification of any other issues that need to be resolved.

121 Sec. 4. (NEW) (a) The Commissioner of Environmental Protection  
122 shall establish a nitrogen credit exchange program to assist in the  
123 implementation of the total maximum daily load. The nitrogen credit  
124 exchange program shall apply to all publicly-owned treatment works  
125 included in the general permit issued pursuant to section 2 of this act.

126 (b) The commissioner, in consultation with the Nitrogen Credit  
127 Advisory Board, shall:

128 (1) Establish a schedule and monitor all nitrogen removal  
129 construction projects;

130 (2) Establish an equivalency factor for each publicly-owned  
131 treatment works, which may be revised at the commissioner's  
132 discretion consistent with the total maximum daily load. The  
133 equivalency factor and any proposed revisions shall be made available  
134 for public comment at least thirty days prior to being implemented in  
135 the nitrogen credit exchange program;

136 (3) Establish the individual waste load allocation for each publicly-  
137 owned treatment works utilizing the equivalency factors and taking  
138 into consideration the schedule for nitrogen removal construction  
139 projects;

140 (4) Monitor annual progress in meeting the fifteen-year  
141 implementation schedule in the total maximum daily load;

142 (5) Propose modifications, as may be necessary, to the general  
143 permit for nitrogen discharges;

144       (6) Establish the annual value of equivalent nitrogen credits giving  
145 consideration to all relevant factors and circumstances including, but  
146 not limited to: The equivalent pounds of nitrogen removed from all  
147 municipal wastewater treatment facilities operating in this state; the  
148 incremental capital costs attributable to the nitrogen removal portion  
149 of each municipal wastewater treatment facility initiating operation in  
150 this state over the preceding five years; the incremental operation and  
151 maintenance costs attributable to the generation of equivalent nitrogen  
152 credits by each municipal wastewater treatment facility initiating  
153 operation in this state over the preceding five years; and  
154 methodologies to appropriately weigh and integrate capital and  
155 operation costs for this state's municipal wastewater treatment  
156 facilities and to calculate a five-year rolling average for equivalent  
157 nitrogen credits available for exchange for all municipal treatment  
158 facilities operating in this state;

159       (7) Oversee and execute all equivalent nitrogen credit exchanges;

160       (8) Maintain a separate account of state-owned equivalent nitrogen  
161 credits;

162       (9) Purchase all equivalent nitrogen credits created by publicly-  
163 owned treatment works at the annually established value;

164       (10) Sell available state-owned equivalent nitrogen credits including  
165 nitrogen credits purchased from publicly-owned treatment works at  
166 the annually established value to enable publicly-owned treatment  
167 works to meet nitrogen limits specified in the general permit for  
168 nitrogen discharges;

169       (11) Whenever practicable, sell remaining state-owned equivalent  
170 nitrogen credits to any other public or private entity;

171       (12) Establish an annual uniform transaction fee not to exceed five  
172 per cent for each equivalent nitrogen credit transaction;

173       (13) Establish accounts of funds created from the purchase and sale

174 of equivalent nitrogen credits and the collection of transaction fees to  
175 be used for administration of the nitrogen credit exchange program  
176 and which may be used for nitrogen removal projects, habitat  
177 restoration projects and research; and

178 (14) Establish any other policies or procedures the commissioner  
179 may deem necessary to carry out the nitrogen credit exchange  
180 program.

181 (c) (1) Not later than March thirty-first, annually, the commissioner  
182 shall audit the performance of each publicly-owned treatment works  
183 operating from January first to December thirty-first of the preceding  
184 year and shall (A) determine the number of equivalent nitrogen credits  
185 for sale and the number of equivalent nitrogen credits to be purchased,  
186 (B) determine and publish the annual value of equivalent nitrogen  
187 credits, and (C) notify each publicly-owned treatment works of their  
188 equivalent nitrogen credit balance. A municipality may petition the  
189 Nitrogen Credit Advisory Board, established pursuant to section 3 of  
190 this act, to request that the commissioner hold a public hearing to  
191 reevaluate the formula used in establishing the value of equivalent  
192 nitrogen credits pursuant to this subsection. Upon a two-thirds vote of  
193 the members of the board for such a hearing, the commissioner shall  
194 conduct a public hearing and issue a ruling as to whether such formula  
195 should stand or be revised.

196 (2) Not later than July thirty-first, annually, each publicly-owned  
197 treatment works shall purchase equivalent nitrogen credits necessary  
198 to meet its nitrogen limits. Such purchase shall be paid by certified  
199 bank check or money order made payable to the "nitrogen credit  
200 exchange program". The check or money order shall state on its face  
201 "nitrogen credit purchase".

202 (3) Not later than August fourteenth, annually, the commissioner  
203 shall purchase all available equivalent nitrogen credits.

204 Sec. 5. (NEW) The Commissioner of Environmental Protection may  
205 audit the annual operating data of publicly-owned treatment works

206 participating in the nitrogen credit exchange program in order to  
207 assess permit compliance. Publicly-owned treatment works that do not  
208 meet permit limits through treatment or the purchase of credits shall  
209 be subject to the enforcement provisions of chapter 446k of the general  
210 statutes.

211       Sec. 6. The Commissioner of Environmental Protection may adopt  
212 regulations, in accordance with chapter 54 of the general statutes, to  
213 carry out the provisions of sections 2 to 5, inclusive, of this act.

214       Sec. 7. Subsection (h) of section 22a-477 of the general statutes is  
215 repealed and the following is substituted in lieu thereof:

216       (h) Amounts in the water pollution control state account of the  
217 Clean Water Fund shall be available: (1) To be invested by the  
218 Treasurer of the state to earn interest on moneys in such account; (2)  
219 for the commissioner to make grants to municipalities in the amounts  
220 and in the manner set forth in a project funding agreement; (3) for the  
221 commissioner to make loans to municipalities in amounts and in the  
222 manner set forth in a project funding agreement for planning and  
223 developing eligible projects prior to construction and permanent  
224 financing; (4) for the commissioner to make loans to municipalities, for  
225 terms not exceeding twenty years, for an eligible water quality project;  
226 (5) for the commissioner to pay the costs of environmental studies and  
227 surveys to determine water pollution control needs and priorities and  
228 to pay the expenses of the department in administering the program;  
229 (6) for the payment of costs for administration and management of the  
230 Clean Water Fund; (7) provided such amounts are not required for the  
231 purposes of such fund, for the Treasurer of the state to pay debt service  
232 on bonds of the state issued to fund the Clean Water Fund, or for the  
233 purchase or redemption of such bonds; (8) for the commissioner to  
234 make grants to municipalities for the development and installation of  
235 structural improvements to secondary clarifier operations including,  
236 but not limited to, flow distribution mechanisms, baffle-type devices,  
237 feed well design and sludge withdrawal mechanisms. Grants under  
238 this subdivision shall be for one hundred per cent of the construction



239 cost and not more than three million dollars from the fund shall be  
240 used for such grants; [and] (9) for the commissioner to pay the costs for  
241 the establishment, administration and management of the nitrogen  
242 credit exchange program described in section 4 of this act, including,  
243 but not limited to, the purchase of equivalent nitrogen credits from  
244 publicly-owned treatment works in the event that the account of state  
245 funds established pursuant to section 4 of this act is exhausted; and  
246 (10) for any other purpose of the Clean Water Fund and the program  
247 relating thereto.

248 Sec. 8. This act shall take effect July 1, 2001.

**GAE**      *Joint Favorable Subst.*

**APP**      *Joint Favorable*